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## Current Legislation

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## CURRENT LEGISLATION

### I. INTRODUCTION

The ninety-ninth General Assembly of the South Carolina State Legislature was one of the longest on record with over six hundred bills introduced in the Senate and over thirteen hundred introduced in the House of Representatives. Of the over eighteen hundred pieces of legislation introduced, only approximately seven hundred reached the governor's desk for final approval. Unfortunately, among the eleven hundred bills that failed to become a part of the law were such badly needed reforms as the Uniform Consumer Credit Code,<sup>1</sup> a proposal to restructure the judiciary in South Carolina,<sup>2</sup> and other proposals ranging from prohibition of the practice of law by solicitors to reform of the liquor laws of the state.

On the positive side, the legislature did enact into the laws of the State some legally significant pieces of legislation, especially in the areas of criminal law, insurance, and tax law. This survey is an attempt to note the more significant changes made in the law by the passage of new legislation and to attempt in a limited degree to forecast the effect on the course of the law in South Carolina.

### II. CRIMINAL LAW

#### A. *Uniform Drug Law*

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it effects almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every state in the Union.<sup>3</sup>

The General Assembly of South Carolina answered the challenge of drug abuse by enacting the Uniform Drug Control Act. The Act,<sup>4</sup> provides for regulation of controlled substances and dangerous drugs and repeals Section 32.1 and Article 2, Chapter 10, Title 32, Code of

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1. Journal of the House of Representatives, No. 23, p. 2 (1971).

2. Journal of the Senate, No. 66, p. 3 (1971).

3. Uniform Control Substances Act, prefatory note 57 S.C. STAT. AT LARGE 800 (Adv. Sht. No. 9, Aug. 12, 1971)

4. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. no. 9, Aug. 12, 1971).

Laws of South Carolina, 1962, as amended, and Act 915 of 1966 which regulated procurement of drugs by fraud and enacted the Uniform Narcotic Drug Law as Section 32.1462. The new law is modeled after the Uniform Control Substances Act which was promulgated by the National Conference of Commissioners on Uniform State laws. The enactment of the new Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970"<sup>5</sup> necessitated an updating of State drug laws if the problem of drug abuse was to be combatted efficiently. "This Uniform Act was drafted to achieve uniformity between the laws of the States and Federal government . . . to form an interlocking trellis to enable government at all levels to control more effectively drug abuse."<sup>6</sup>

The Act is structured so that not only is the law relating to legitimate distribution of controlled substances for medical use revised, but also the law relating to illicit "underground" traffic in drugs such as heroin and marihuana. The purpose of this dual structuring is to better combat and control the increasing practice of clandestinely manufacturing "bootleg" adulterated drugs and introducing them into legitimate channels and, likewise, to prevent the diversion of legally manufactured drugs into illegal markets.

Co-ordination and codification between the laws of the various states and the Federal drug law is accomplished through the use of five different schedules into which marihuana, and all dangerous drugs and narcotics are placed. Each schedule has its own individual criteria. For example Schedule One drugs are those which exhibit a high potential for abuse, have no accepted medical use in treatment in the United States, and exhibit a lack of accepted safety for use in treatment under medical supervision.<sup>7</sup> The use of these schedules allows the control agency to add or drop a drug from a particular schedule, or to switch a particular drug from one schedule to another. The law is thus flexible and may reflect the latest research findings on a particular drug. It is important to note that the schedule in which a particular drug is placed is not absolutely determinative as to the penalty for possession or sale of that particular drug. For example, both marihuana and Lysergic acid (LSD) are classified as Schedule I drugs, yet, the penalty for sale

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5. 84 U.S. STAT. AT LARGE § 1281 (1970).

6. Uniform Control Substances Act, prefatory note, 57 S.C. STAT. AT LARGE 800 (Adv. Sht. No. 9, Aug. 12, 1971).

7. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

or distribution of marihuana for a first offense is deemed a misdemeanor punishable by not more than five years in prison or a five thousand dollar fine or both,<sup>8</sup> while for sale or distribution of LSD the penalty on first offense is deemed a felony punishable by a sentence of not more than fifteen years in prison or a fine of not more than twenty-five thousand dollars or both.<sup>9</sup>

The new law itself cannot be completely explained nor understood in a brief survey, but the import of the legislation is to provide a realistic and progressive approach to the problem of drug abuse by moving in two significant directions. The first is to attempt to emphasize enforcement against the "pusher" or distributor and away from, for example, the fourteen-year old caught at a "pot party" experimenting with marihuana for the first time. The idea is to lessen the brutalizing effect which all too often occurs when a teenager suffers his first encounter with the law on a possession charge. This effect seems a concession to the argument that enforcement of the marihuana laws breeds contempt for the judicial system among the young people who have been the chief targets of such enforcement in the past. Under the old South Carolina law a person who was arrested for possession of six grams, about *one-fifth* of an ounce, of marihuana was prima facie guilty of violation of the law for possession for sale of marihuana and was subject to a three and one-half year jail sentence and a three thousand five hundred dollar fine.<sup>10</sup> Under the new law that same person could have in his possession up to 28 grams or one ounce of marijuana and be guilty of a misdemeanor punishable by a sentence of not more than three months and a fine of not more than one hundred dollars.<sup>11</sup> Further, in order to prevent the excessive bail as a weapon against undesirable elements the law provides that for a charge of possession the bail shall not exceed twice the amount of the court fine provided as penalty.<sup>12</sup> The new law allows the court in the case of a defendant on a first charge of possession of marihuana (and certain other drugs) who is found guilty or pleads guilty, to defer further proceedings and place him upon probation, including a rehabilitation program. Upon fulfillment of the terms of probation the proceedings

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8. *Id.*

9. *Id.*

10. S.C. CODE ANN. § 32-1492.1 (Supp. 1966).

11. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

12. *Id.*

are dismissed against the defendant and if the defendant is under twenty-five years of age he may apply for an order from the court to expunge from all official records all recordation of his arrest, indictment or information, trial, finding of guilt and dismissal. If such an order is granted it restores the person to the status he occupied before the arrest and indictment.<sup>13</sup> These provisions of the new law are thus clearly designed to avoid tagging a first offender with a police record.

The second significant thrust of the new law is toward the realization that it is the "hard" drug use for which society must suffer and pay the highest price. Emphasis is directed toward the heroin user who must commit a large number of crimes to support his habit and likewise against the pusher who supplies him with the narcotic. The old South Carolina law provided, for example, the same penalties for sale of marijuana as it did for sale of heroin.<sup>14</sup> However, under the new law, while the penalty for the sale of marijuana on first offense is a misdemeanor, whose imprisonment term is increased from three and one-half to five and one-half years, the sale of heroin (or LSD), is a felony with a sentence increase from three and one-half to fifteen years.<sup>15</sup>

Even in the case of hard drugs, however, an attempt is made to delineate between the "pusher" and the "user" who, while undoubtedly a source of a great number of crimes, is himself victimized by the inevitably fatal end of a heroin addict. Under the Uniform Drug Act a "Commissioner of Narcotics and Controlled Substances" is created. The Commissioner's duties include planning and co-ordination of educational programs designed to prevent and deter misuse, and research programs designed to prevent, understand, and deal with drug abuse.<sup>16</sup> In this same vein under Section Five of the act any addict may seek advice and counseling concerning drugs or information on treatment and rehabilitation "without fear of arrest or of being reported to the police for prosecution, as a drug law violator."<sup>17</sup>

The passage of the new Drug Act by the General Assembly may have been one of the most important and laudable acts by that body in recent years. The new law provides a flexible and progressive ap-

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13. *Id.*

14. S.C. CODE ANN. § 32-1492.1 (Supp. 1970).

15. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

16. *Id.*

17. *Id.*

proach to drug abuse with broad social implications as well. For those who view the law as an instrument for social change, the new drug act is a concrete example that "law cannot stand aside from the social changes around it."<sup>18</sup>

### *B. Penology—Interstate Corrections Compact*

The plight of the nation's prisons and the men who occupy them has long been with us, but only in recent years has the despicable condition of the peno-correctional system in the United States begun to gain the attention and priority that it rightly deserves. One explanation for the new public outcry to clean up the nation's prison systems is the realization that a significant portion of crime is committed by second or third offenders who are themselves products of correctional systems which are nothing more than revolving doors through which a prisoner passes in the process of becoming a hardened criminal. South Carolina's correctional system, while making significant progress in the past few years, is faced with a problem of insufficient funds and an archaic, if not literally crumbling, Central Corrections Institute.<sup>19</sup> The General Assembly has provided a unique approach to help alleviate this situation by passage of the Interstate Corrections Compact.

The purpose of the Compact is to "fully utilize and improve institutional facilities and to provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders . . . of the party states. . . ."<sup>20</sup> The compact accomplishes this purpose by providing for the transfer of inmates from one state's prison system to another party state's system with the sending state bearing the cost of maintenance of the prisoner while the inmate is in the receiving state's care. The rehabilitative potential of such a system of transfer is almost limitless and the advantages are obvious. For example, a state that lacked a rehabilitative program sufficient to deal with a particular prisoner would be able to transfer the prisoner to a state which did have such a program, or a number of prisoners might be transferred to determine if a specific rehabilitative model was suited to the needs and capabilities of the sending state.

Article Four of the Act is perhaps the most significant to the

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18. *Roth v. United States*, 354 U.S. 476, 478 (1957) (Brennan, J.).

19. See 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 12, Aug. 12, 1971).

20. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

attorney who might represent an inmate transferred under the auspices of the Act. Under this Section the prisoner after transfer remains subject to the jurisdiction of the sending state, but can be paroled or placed on probation or discharged in the receiving state.<sup>21</sup> The new law provides that any peno-correctional hearings concerning a transferred inmate may be held by the officials of the sending or receiving state, but that the law to be used is that of the sending state.<sup>22</sup> Further "the fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in . . . the sending state."<sup>23</sup> Perhaps the only way a sending state might lose jurisdiction over the transferred inmate would be if at the time of the request by the sending state that a prisoner be returned, a formal criminal charge is pending against the prisoner. In such a case the inmate cannot be discharged without the consent of the receiving state until the criminal charge against him is settled.<sup>24</sup>

The Interstate Corrections Compact represents a significant step forward in upgrading South Carolina's correctional and rehabilitative abilities through cooperation with her sister states. It is hoped that this upgrading might be followed by more emphasis on modernizing the corrections system within South Carolina.

### III. INSURANCE

In recent years there has been mounting controversy and public dissatisfaction with the present system of automobile liability insurance and the handling of litigation resulting from automobile accidents. Both Massachusetts and Florida have enacted "no fault" insurance plans into law. The South Carolina General Assembly this year, responding to a request by Governor West that no major change be made in the state's insurance laws until a study committee could furnish recommendations for the 1973 session, refrained from a complete revamping of the law in this area. However, through the persistence of three Senators, some revision of insurance law in South Carolina was made.

Perhaps the major piece of legislation in the area of automobile

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21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

insurance dealt with changes in the Uninsured Motorist Fee and dispersal of the monies in the fund. Three specific changes were made in the law. First, Section 46-136 of the 1962 Code, as amended, was struck and replaced by a new section which increased the uninsured motorist fee from fifty to one hundred dollars. Secondly, Section 46-750.11 of the 1962 Code, as amended, and Section 46-750.33 of the Code, were amended to provide that insurance companies, who previously under the law had to provide protection to insured motorists under the uninsured motorist provision at "no additional charge,"<sup>25</sup> may now charge for such coverage with premium rates "determined and regulated as rates for automobile insurance are generally determined and regulated."<sup>26</sup> Section 8 of the Act limits the impact of this change, but only for the *initial* year in which the new premium is paid, by limiting such premium so that it "shall not exceed three dollars per year for the initial year in which they are authorized."<sup>27</sup> It seems clear that, after the initial year the law might well make a significant change in the rates to be charged by the various insurance companies, providing they obtained the necessary approval for rate increases. The third major change is in Section 46-138.2 which deals with the use of the funds collected from the uninsured motorist fee. Under the old law, the proceeds deposited into the uninsured motorist fund were disbursed by the Chief Insurance Commissioner, as "he deemed best," to defray administrative cost and to the insurance companies based as nearly as possible upon the ratio of each insurance company's exposure to loss suffered by all insurance companies writing insurance in South Carolina.<sup>28</sup> Under provisions of the new law the funds are to be used in highway safety programs as determined by the General Assembly.<sup>29</sup>

The remainder of the new laws in this area deal with the control and regulation of the insurance industry itself. Under one act,<sup>30</sup> ratified May 13, 1971, the law is changed so that in order for an insurance company to receive credit for reinsurance recoverable from a reinsurance company, the reinsurance company must either be licensed in South Carolina or be approved by the Insurance Commissioner; if not, the company seeking to receive such credit cannot do so in excess of

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25. S.C. CODE ANN. § 46-750.11 (1962).

26. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

27. *Id.*

28. S.C. CODE ANN. § 46-138.4 (Supp. 1963).

29. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 1, 1971).

30. 57 S.C. STAT. AT LARGE 310 (Adv. Sht. No. 7, July 29, 1971).



funds withheld under a reinsurance treaty between the two companies.<sup>31</sup> Under previous provisions a company could receive full value for reinsurance recoverable if the reinsurance company was licensed anywhere in the United States.<sup>32</sup>

Another new law makes an effort to better insure the solvency of stock insurance companies and mutual insurance companies licensed in South Carolina. The Legislature had previously adopted the categorical system of determining necessary capital and surplus by amending Sections 37-181 and 37-182 of the 1962 Code of Laws. The categorical system of determining minimal requisites of capital and surplus necessitates a company which issues insurance in a specific area where losses and claims are highest to maintain a larger amount of capital and surplus than companies operating in a less costly area. For example, under the old law a company licensed to write marine insurance had to maintain twice as much a base figure as did a company just writing life insurance.<sup>33</sup> Under the new law initial surplus requirements were raised fifty percent.<sup>34</sup> Correspondingly, requirements for mutual insurance companies were raised forty per cent above those for simple stock insurance companies.<sup>35</sup>

Perhaps the most significant and innovative law passed in this area was the creation of the South Carolina Insurance Guaranty Association. The purpose of this Act is to provide a mechanism for the payment of covered claims under certain type insurance policies when the insurer is unable to pay the claim due to insolvency. The act applies to all kinds of direct insurance except life, title, surety, disability, credit mortgage guaranty, and ocean marine insurance.<sup>36</sup> Also all insurers licensed to write the types of insurance covered by the Association are automatically made "members" under the new law. The Association is obligated to pay all claims existing prior to the determination of insolvency and those arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination of insolvency.<sup>37</sup> However, the Association

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31. *Id.*

32. S.C. CODE ANN. § 37-187 (1962).

33. S.C. CODE ANN. §§ 37-181(a), -182 (Supp. 1963).

34. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 7, July 29, 1971).

35. S.C. Code Ann. § 37-182 (Supp. 1963).

36. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 10, Aug. 25, 1971).

37. *Id.*

is obligated to pay only those claims above one hundred dollars and less than three hundred thousand dollars, except in the case of workmen's compensation where no limit is placed on the size of the claim.<sup>38</sup> The funds of the Association are provided through assessments to each Association member based on the net amount of written premium of the member insurer for a preceding calendar year to the net amount of premiums in the Association as a whole for the particular kinds of insurance covered by the Act. Further, any person who has a claim that is covered by both an insolvent and a solvent insurance company, or by another Guaranty Association, must first exhaust his remedies against those sources before making claims against the South Carolina Association.<sup>39</sup> To aid in the possible prevention of insolvency, the Act empowers the Association to make periodic examination of the member companies to determine if they are solvent.

#### IV. TAXATION

The 1971 Legislature introduced over fifty bills providing for revision of tax laws; of these, fifteen of the measures were enacted. Of the most practical importance was a change in the law concerning the filing and payment dates of Estate Taxes. Under Section 65-496 of the 1962 Code, fifteen months after the date of death was the period within which one must file a return of the Estate Tax. Under the new law, the time allowed is reduced to nine months.<sup>40</sup> However, under the old provision no more than six months was allowed as extension time to the fifteen month period, while the new law provides for a twelve month extension period.<sup>41</sup> Also the time that the tax is payable from the date of death is changed from fifteen months<sup>42</sup> to nine months.<sup>43</sup> with the extension period extended from six months<sup>44</sup> to twelve months.<sup>45</sup>

Two more revisions in the tax area merit some mention. The first is a revision concerning the disposition and possession of taxes paid under protest. Under Section 65-2662 of the 1962 Code, any taxes paid

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38. *Id.*

39. *Id.*

40. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 2, April 14, 1971).

41. *Id.*

42. S.C. CODE ANN. § 65-611 (1962).

43. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 2, April 14, 1971).

44. S.C. CODE ANN. § 65-513 (1962).

45. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 2, April 14, 1971).

under protest were, upon payment, transferred into the State Treasury, be it tax collected by a County or a Commission. Accordingly when it was determined that the tax was wrongfully collected, a warrant was issued from the Comptroller General to refund the collected funds. Under the new law, the procedure as to tax collected by a Commission under protest is unchanged, but tax collected under protest by a County is retained by the County Treasurer. The County's "Full Faith and Credit" is pledged in place of the actual transfer of the funds into the State Treasury and in order to regain a refund of the funds, a warrant must issue from the County Treasurer and not from the Comptroller General.<sup>46</sup> The effect of the new provision is minimal since the jurisdiction for the hearing of cases involving tax paid under protest is not changed.<sup>47</sup>

The Legislature also passed an Act to ratify an amendment to Section 4, Article 10 of the Constitution of South Carolina, providing for "Homestead Tax Exemptions." The new amendment exempts from taxation all county, municipal, and town property, all school property, and all property of charitable institutions such as churches, hospitals, etc., from taxation when used for public purposes and not for revenue production. However, where the profits of such organization or institution are applied to private use, then such use, under the Amendment, is a taxable use.

## V. TORTS

Changes in the law of Torts occur more often through judicial decision than legislative directive. However, one proposed bill was introduced in the House of Representatives which would drastically alter this area of the law in South Carolina. House Bill No. 1162 would provide that Tort actions be permitted against eleemosynary institutions having insurance coverage. Such institutions presently enjoy immunity from tort actions under South Carolina law. The Bill itself presents some puzzling questions in that it provides that such actions be allowed only against institutions with insurance to cover the resulting claim. Could an institution merely re-establish its immunity by not carrying insurance against such actions? Further, the fact that insurance coverage exists would not be admissible at trial. After a verdict

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46. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 6, June 23, 1971).

47. S.C. CODE ANN. § 65-2662 (1962).

is rendered against the institution, the court would inquire into the amount of coverage and if less than the judgment, the judgment would be reduced to the amount of coverage. Are we to assume that all lay juries will be ignorant of the law and not conclude that the institution would not be in court if it did not have insurance? While the proposal seems to have some serious flaws, it at least directs attention to an area of law in this state which needs re-examination.

## VI. WORKMEN'S COMPENSATION

The 1971 legislative session was a lean year in the area of workmen's compensation law. One important change in the law was passed, however, when inmates under the jurisdiction of the Department of Corrections were added to the list of persons eligible for compensation under the workmen's compensation law.

The change in the law is accomplished by adding Sections 72-11.1 and 72-11.2 to the 1962 Code. Under these new provisions an inmate would be eligible to receive compensation if he were injured in "performance of his work in connection with the maintenance of the institution, or with any industry maintained therein, or with any highway or public works activity outside the institution."<sup>48</sup> The inmate would have to, under the new law, wait until he was paroled or discharged in order to be compensated for an injury. However, the claim must be filed within one year of the injury, and while the inmate is in custody of the Department of Corrections.<sup>49</sup> In the case of death of the inmate, the benefits of any workmen's compensation claim are to be paid to his dependents, but only in monthly installments, any one of which may not exceed ten per cent of the total sum.<sup>50</sup> It is stressed that under the law the injury must be work related and could not, of course, be the result of a fight, riot or recreational activity. The base set by the new law to calculate compensation to inmates is forty dollars a week.<sup>51</sup> Provision was also made in the Act to allow the various county prison systems to bring their inmates within the coverage of the workmen's compensation law by making the necessary contributions to the Workmen's Compensation Fund. In view of the extensive use of county

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48. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

49. *Id.*

50. *Id.*

51. *Id.* H. 1625, § 2 (1971), (A Bill still under consideration, thus no Adv. Sht. No.).

“gangs” within South Carolina in the maintenance of county roads, it is hoped that the various counties will take advantage of this provision.

Also worth noting is a bill in committee in the House which would amend Section 72-160 of the 1962 Code, last amended in 1966 by Act number 1091, by increasing the total amount of workmen’s compensation payable from twelve thousand five hundred to seventeen thousand dollars. This proposal does not seem unreasonable in light of the increase in the amount of judgments in personal injury tort cases in recent years.

## VII. CONTRACTS

Unfortunately, in the area of contract law the most important development was the Legislature’s failure to enact the Uniform Consumer Credit Code into law. At the time of recess of the General Assembly, neither the House nor Senate version of the U.C.C.C. had been subjected to floor debate.

The failure of the measure to gain passage can probably be attributed to two factors. The first cog was the complex nature of the proposal. Early in the session it was generally thought that some form of the Code would be enacted during the 1971 Legislative session. However, when the proposal was referred to committee, a necessary prerequisite before any floor action could begin, the legislators apparently found the proposal too complex to digest and turned their attention to a horde of other issues which also vied for their attention.

The second encumbrance is perhaps a more serious one. In such a lengthy Bill that bears so heavily on many commercial aspects of the law it is almost a certainty that there will be some provisions which one or more of the legislators oppose. In any type of uniform codification of the law the danger always exists that when the proposal comes out of the “legislative mill,” the “uniform” in its title might well be a sham. For example, while South Carolina managed to enact the Uniform Commercial Code in the same general form as other states, one can point out certain provisions which are peculiar to South Carolina and were the products of the efforts of one or two legislators.

The response by the supporters of the Bill to the delays and roadblocks in the way of its passage was not encouraging to those who

believe the U.C.C.C. is a progressive and much needed, if not necessary, piece of legislation. Indeed the supporters' efforts may have been fatal to any hope of passage of the U.C.C.C. in its uniform form in the next legislative session. The response was to carve certain acceptable portions of the code out and to try to pass these separate portions as individual revisions of the various sections of the law to which they pertain. For example, one proposed piece of legislation would allow the buyer in a "home solicitation contract" to revoke such a contract without penalty within three days of its making.<sup>52</sup>

A very important aspect of any "uniform code" is that its uniformity prevents conflict of law between the various jurisdictions. This fact would seem to be even more critical in the area of credit transactions with the ever increasing mobility prevalent in our society. It is hoped that the Legislature will consider this fact when the Uniform Consumer Credit Code is again considered.

#### VIII. WILLS AND TRUSTS

A number of Bills were introduced during the 1971 session with the purpose of enacting into law an effective escheat law in South Carolina. The Legislature did not pass any of these single bills but instead made the new escheat law a part of the General Appropriations Act. The practice of "bobtailing" important legislation into the General Appropriations Act has been a long standing practice in South Carolina, but its days are probably numbered since there was much controversy over the amount of extraneous legislation having nothing to do with appropriations in this year's Act.

The escheat law is too complex to be given a complete and detailed treatment in this survey, but the law generally provides that all property held by a banking organization, funds toward purchases in certain financial organizations, unclaimed funds held by life insurance companies, unclaimed funds and property held by utilities such as deposits or refunds including interest and dividends on stock, and all intangible personal property held by a public authority or public officer or by a private person for another private person shall be deemed abandoned after a length of time determined by which of the aforementioned categories the property or funds falls within. For example, in the case of a savings account in a bank, unless the owner within twelve years from

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52. 57 S.C. STAT. AT LARGE 225 (Adv. Sht. No. 9, Aug. 12, 1971).

deposit has increased or decreased the amount of deposit, corresponded in writing concerning the deposit or indicated an interest as evidenced by a file or memorandum with the banking organization, the account is presumed abandoned and would fall within the escheat law.<sup>53</sup> In the case of intangible property held in trust by a public officer for a private person, unless such is claimed within seven years from the date payable or distributable, it is presumed abandoned.

The law provides that any person holding such abandoned property must file a report with the Tax Commission including information as called for by the law and by the special form which the Tax Commission supplies. "The report must be filed before November first of each year as of June thirtieth next preceding. . . ." <sup>55</sup> Within one hundred and twenty days the Tax Commission must publish public notice for two successive weeks. If the owner does not establish his possessory right during or within twenty days after publication of such a notice, the abandoned property is delivered to the Tax Commission by the holder and sold by the Commission in a manner to bring the highest return, unless the abandoned property is money which, if less than ten thousand dollars, is retained outright by the Commission.<sup>56</sup> If the amount of money is more than ten thousand dollars, the holder, if an interest-paying bonding institution, retains the funds in the name of the South Carolina Escheat Account and interest is allowed to accumulate on such funds.<sup>57</sup>

ANDREW H. ROWELL, III

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53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*